

REMARKS

Applicants thank the Examiner for the very thorough consideration given the present application.

Claims 1-9, 28 and 29 are now present in this application. Claim 1 is independent. By this amendment, non-elected claims 10-25 are canceled without prejudice to presenting them in a divisional patent application, and claims 26 and 27 are canceled. Claim 1 is also amended. No new matter is involved. Support for the amendment to claim 1 is found throughout Applicants' originally filed disclosure including, for example, Fig. 6D and related portions of the specification.

Reconsideration of this application, as amended, is respectfully requested.

PREMATURE FINAL OFFICE ACTION

Applicant respectfully submits that this Action should not have been made final. As pointed out in the Amendment filed on December 19, 2005, the Office Action dated September 19, 2005, only treated some of the pending claims, i.e., claims 1-9, contrary to the explicit requirements of 37 CFR §1.104 and MPEP §707.07, which require an Office Action be complete as to all

matters. Applicants respectfully submit that claims 1-29 are pending and that all pending claims at the time the September 19, 2005 Office Action was prepared and mailed, i.e., claims 1-25, should have been treated in the outstanding Office Action.

The September 19, 2005 Office Action did not treat claims 10-25 at all. Moreover, MPEP §707.07(f) requires that Applicants' grounds of traversal must be taken note of and the substance of those arguments be answered. In this regard, Applicants respectfully submit that Applicants filed a four-page Response to Restriction Requirement dated September 2, 2005, traversed the merits of the restriction requirement made in the previous Office Action, dated August 2, 2005.

The September 19, 2005 Office Action fails to comply with this explicit requirement of the MPEP, thereby denying Applicants the substantive and procedural due process to which they are entitled under the Administrative Procedures Act. See in this regard, In re Zurko, 119 S.Ct. 1816, 50 USPQ2d 1930 (1999), and In re Gartside, 53 USPQ2d 1769 (Fed. Cir. 2000).

Furthermore, MPEP §707.07(e) indicates that every point in the prior action of an Examiner, which is still applicable, must be repeated or referred to, to prevent implied waiver of the requirement.

Accordingly, Applicants consider that the initial restriction/election requirement has been impliedly withdrawn and that, by the outstanding Office

Action not treating claims 10-25 on their merits, Applicants have been denied the substantive and procedural due process to which they are entitled.

Under the circumstances, Applicants respectfully submit that the September 19, 2006, incomplete, Office Action should have been withdrawn and that the outstanding, February 28, 2006 Office Action should have been a new, complete, non-final, Office Action.

PERSONAL INTERVIEW

Applicants acknowledge with appreciation the courtesies extended by examiner Dudek to Mr. Robert J. Webster, their below-named representative, during the telephone interview dated May 26, 2006. During that interview agreement was reached to the effect that claim 1, as amended, appears to patentably define over the applied art of record.

ENTRY OF AMENDMENTS

Applicants respectfully submit that it is proper to enter these amendments because they appear to place the application in condition for allowance, present no matter in addition to what has previously been examined, and should be entered as a matter of right because the outstanding Office Action should not have been made final.

RESPONSE TO THE REJECTIONS UNDER 35 U.S.C. § 103

Claims 1, 6, 26 and 27 stand rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent 5,793,457 to Tamai et al. ("Tamai"). This rejection is respectfully traversed.

Applicants have amended claim 1 so that it includes subject matter which has been indicated to appear to patentably define over the applied art of record, including Tamai '457.

Accordingly, Applicants respectfully submit that claim 1, as amended, and claim 6, which depends from claim 1, patentably define over Tamai '457.

Accordingly, the Office Action fails to make out a *prima facie* case of obviousness of the claimed invention based on Tamai '457.

Reconsideration and withdrawal of this rejection of claims 1, 6, 26 and 27 are respectfully requested.

Claims 1, 4, 26 and 27 stand rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent 5,880,803 to Tamai et al. et al. ("Tamai '803"). This rejection is respectfully traversed.

Applicants have amended claim 1 so that it contains subject matter which has been indicated to appear to patentably define over the applied art of record, including Tamai '803.

Accordingly, Applicants respectfully submit that claim 1, as amended, and claim 4, which depends from claim 1, patentably define over Tamai '803.

Reconsideration and withdrawal of this rejection of claims 1, 4, 26 and 27 are respectfully requested.

Claims 1, 5, 26 and 27 stand rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent Application Publication US 2005/0099580 to Lee et al. ("Lee") in view of Tamai '803. This rejection is respectfully traversed.

Lee only qualifies as prior art under 35 U.S.C. § 102(e). Thus, the basis for this rejection is actually 35 U.S.C. §§ 102(e)/103(a). Moreover, Lee is assigned to LG. Philips LCD Co., Ltd, as is the instant patent Application. In other words, this Application and Lee are commonly assigned.

Furthermore, it is respectfully submitted that, this Application, Serial No. 10/825,414 and U.S. Patent Application Publication US 2005/0099580 were, at the time the invention of this Application was made, owned by LG. Philips LCD CO., Inc.

Accordingly, Lee is not prior art to Applicant under 35 U.S.C. § 102(e) and to the extent that this rejection is based on Lee, this rejection is improper and must be withdrawn.

Furthermore, as noted above, agreement was reached that the subject matter in amended claim 1 appears to patentably define over the applied art.

Accordingly, the Office Action fails to make out a *prima facie* case of obviousness of the claimed invention based on Lee and Tamai '803.

Reconsideration and withdrawal of this rejection of claims 1, 5, 26 and 27 are respectfully requested.

ALLOWABLE SUBJECT MATTER

Applicants acknowledge with appreciation the indication of allowable subject matter in claims 2, 3, 7-9, 28 and 29. Applicants have re-written claims 2, 7 and 8 in independent form to place them in condition for allowance, but have not re-written claims 28 and 29 in independent form at this time, because of Applicants' belief that claim 1, from which claims 28 and 29 depend, is allowable and, thus, claims 28 and 29 are allowable in their present form. Claims 2, 3 and 7-9 are allowable because claims 2, 7 and 8 have been re-written in independent form.

Because the remaining references cited by the Examiner have not been utilized to reject the claims, but have merely been cited to show the state of the art, no comment need be made with respect thereto.

CONCLUSION

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn, and that a new, non-final, Office Action be mailed that treats all pending claims 1-25. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

Favorable action on the present application is earnestly solicited.


If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Robert J. Webster, Registration No. 46,472, at (703) 205-8000, in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By: Esther Chong
Esther H. Chong
Reg. No.: 40,953

EHC/RJW:cm 

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000